

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES DERRICK O'NEAL,	:	CASE NO. 1:02CV 0357
Petitioner,	:	District Judge Sandra S. Beckwith
	:	Magistrate Judge Michael R. Merz
v.	:	
MARGARET BAGLEY, Warden	:	<u>PETITIONER'S MOTION FOR</u>
	:	<u>EXTENSION OF TIME IN WHICH</u>
Respondent.	:	<u>TO MOVE FOR EVIDENTIARY</u>
	:	<u>HEARING</u>

Now comes the Petitioner, by and through counsel, and hereby asks the Court for an extension of time in which to move for an evidentiary hearing up to and including January 28, 2008. A Memorandum in support of this Motion is attached hereto and made a part hereof.

Respectfully submitted,

/s/ Michael W. Krumholtz
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/s/ Lawrence J. Greger
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ATTORNEYS FOR PETITIONER

MEMORANDUM

The discovery cut off in this matter was extended up to and including December 13, 2007 (See Notation Order dated 11/13/07). On that date the deposition of Petitioner's former trial counsel, John Keller, was taken at Mr. Keller's office in Cincinnati. The transcript of that deposition has been filed with the Court (Doc. #54). The Court previously ordered that the Petitioner's deadline for filing a motion for an evidentiary hearing was fifteen (15) days following the completion of discovery (Doc. #37). Following Mr. Keller's deposition, Attorney John Gideon was given permission to withdraw as co-counsel for Mr. O'Neal and Attorney Larry Greger was permitted to substitute as co-counsel (Doc. #52). This transition from Mr. Gideon to Mr. Greger requires that Mr. Greger review the case and in particular the depositions of John Keller and Kenneth Taylor (filed with the Court on November 5, 2007, Doc #50) in order to determine the propriety of seeking an evidentiary hearing. With the press of business created by the Christmas holiday and a planned trip out of the country from December 26, 2007 to January 3, 2008, Mr. Greger requires additional time to review the case materials and to consult with Mr. Krumholtz, his co-counsel, relating to the motion for evidentiary hearing. Counsel will then need additional time to prepare any motion for evidentiary hearing following that consultation. Accordingly, the Petitioner asks this Court for an extension of time in which to file a motion for evidentiary hearing up to and including January 28, 2008.

Consistent with this Court's Local Rule 7.3(a), Mr. Krumholtz has attempted to contact counsel for the Respondent, Steven Maher. Upon calling Mr. Maher's office on December 21st, Mr. Krumholtz was advised that Mr. Maher will be out of the office until January 3, 2008. In the absence of Mr. Maher, Attorney Greger spoke with Charles Wille, Sr., Attorney of the Capital Crimes Division for the Ohio Attorney General's Office

on December 21, 2007 and Mr. Wille indicated that he would neither consent nor object to this extension. Accordingly, no consent to this Motion on the part of Respondent's counsel could be obtained.

Respectfully submitted,

/s/ Michael W. Krumholtz
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was electronically filed and served to Stephen E. Maher, Assistant Attorney General, Capital Crimes Section, 30 East Broad Street, 23rd Floor, Columbus, Ohio 43215-3428, by e-mail via electronic filing on this 27th day of December, 2007.

/s/ Michael W. Krumholtz
Counsel for James Derrick O'Neal

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